

**REDACTED DECISION -- 07-007 RMFE -- BY ROBERT W. KIEFER, JR., ALJ --
SUBMITTED for DECISION on JANUARY 25, 2007 -- ISSUED on JUNE 8, 2007**

SYNOPSIS

MOTOR FUEL EXCISE TAX -- BURDEN OF PROOF -- In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioner-taxpayer to show that it is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002].

MOTOR FUEL EXCISE TAX -- LIMITATION ON FILING CLAIM FOR REFUND -- W. Va. Code § 11-14C-31(c)(3) provides that a claim for refund filed by a county board of education for the immediately preceding fiscal year that ends on June 30 must be filed on or before August 31 of the year on which the fiscal year ends.

MOTOR FUEL EXCISE TAX -- LIMITATION ON FILING CLAIM FOR REFUND -- The West Virginia Office of Tax Appeals has no authority to disregard the express statutory requirement specifying the date by which a claim for refund must be filed.

FINAL DECISION

On or about September 13, 2006, the Petitioner filed a claim for refund of motor fuel excise tax for gasoline and for “undyed” and dyed diesel fuel, for the period of October 1, 2005, through June 30, 2006.

The Fuel Tax Administration Unit of the Internal Auditing “Division” of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”), by letter dated September 20, 2006, denied the entire claim. The reason stated for the total denial was that the refund claim for the period at issue was not timely filed, that is, it was filed after August 31, 2006, in violation of W. Va. Code § 11-14C-31(c)(3) [2005].

Thereafter, by mail postmarked November 9, 2006, received in the offices of the West Virginia Office of Tax Appeals on November 13, 2006, the Petitioner timely filed with this tribunal a petition for refund. W. Va. Code §§ 11-10A-8(2) [2002] & 11-10A-9(a)-(b) [2005]. The Petitioner waived its right to an evidentiary hearing and requested that the matter be

submitted on the basis of documents. This Office granted the Petitioner's request, as no material factual disputes are involved. The State Tax Commissioner initially contested the ruling that the matter be submitted on documents, but subsequently agreed that the matter be so submitted. This matter was submitted on written filings on January 25, 2007.

FINDINGS OF FACT

1. For the period commencing October 1, 2005, and ending June 30, 2006, the Petitioner purchased 7000 gallons of gasoline, on which it paid motor fuel excise tax.

2. For the same period, the Petitioner also purchased 54,700.2 gallons of "undyed" fuel and 11,215 54,700.2 gallons of dyed fuel, on which it paid motor fuel excise tax.

3. On or about Tuesday, August 8, 2006, the Petitioner's place of business was destroyed by fire.

4. As a consequence of said fire, agents and employees of the County Commission were actively involved in aiding and assisting other agencies of the county government in dealing with the aftermath of said fire.

5. In its efforts to assist other agencies of the Petitioner's county, the Petitioner was able to relocate the office of the prosecuting attorney and the "county's courtroom" to available space of the Petitioner.

6. The staff of the treasurer of the Petitioner was directly involved with rearranging its office space to accommodate the move of the office of the prosecuting attorney and the courtroom.

7. Because the time and attention of the Petitioner's treasurer's staff was consumed by this emergency situation, it did not address some of its usual and ordinary business.

8. One of the items that the treasurer's staff did not address in a timely manner was the filing of its claim for refund for tax paid on its purchases of gasoline, dyed fuel and "undyed" fuel for the period commencing October 1, 2005, and ending June 30, 2006, as more fully set forth above.

9. On or about September 13, 2006, the Petitioner filed with the Respondent State Tax Commissioner a claim for a refund of the motor fuel excise tax paid by the Petitioner for the period commencing October 1, 2005, and ending on June 30, 2006.

10. By letter dated September 20, 2006, the Respondent denied the claim as being untimely filed past the August 31 statutory deadline.

11. The Petitioner then filed a petition for refund with this tribunal. *See* W. Va. Code § 11-10A-8(2) [2002].

DISCUSSION

West Virginia Code § 11-14C-9 provides, in relevant part:

(c) *Refundable exemptions from flat rate component of tax.* -- Any person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five [§ 11-14C-5] of this article shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

* * * *

(4) Any county boards of education;

* * * *

(d) *Refundable exemptions from variable rate component of tax.* -- Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five [§ 11-14C-5] of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

* * * *

(5) Any county boards of education[.]

West Virginia Code § 11-14C-31 provides, in relevant part:

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect. No payment of any refund may be made to any person other than the original person entitled to claim the refund except as otherwise expressly provided in this article. The Commissioner shall cause a refund to be made under the authority of this section only when the claim for refund is filed with the Commissioner within the following time periods:

* * * *

(3) A petition for refund under subsection (c) or (d), section nine [§ 11-14C-9] of this article shall be filed with the Commissioner on or before the last day of January, April, July and October for purchases of motor fuel during the immediately preceding calendar quarter: Provided, That any application for refund made under authority of subdivision (15), subsection (c) of said section when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be filed within twelve months from the month of purchase or delivery of the motor fuel: *Provided, however, That all persons authorized to claim a refundable exemption under the authority of subdivisions (1) through (6), inclusive, subsection (c), section nine of this article and subdivisions (1) through (6), inclusive, subsection (d) of said section shall do so no later than the thirty-first day of August for the purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June.* (Emphasis added.)

It is not disputed that the Petitioner failed to file its claim for refund on or before August 31, 2006. As such, the Petitioner's claim for refund was not timely. However, it asks this tribunal to consider the extenuating circumstances that contributed to its failure to timely file its claim, and to award it the refund to which it would be entitled had it timely filed its claim for refund.

It is true that the Petitioner presents grounds for the untimely filing of its claims which appear to be extenuating. However, W. Va. Code § 11-14C-31(c)(3) provides a definite date by which a county board of education must file its claim for refund with the State Tax Commissioner. The statute specifies no grounds upon which the date certain set forth in the statute may be waived or disregarded. The statute makes no provision for any filing of a claim for refund based on extenuating circumstances. Neither the State Tax Commissioner nor this tribunal may extend the time for filing a claim for refund due to extenuating circumstances.

Additionally, this tribunal has no equitable jurisdiction which would allow it to disregard the clear requirements of the statute. This tribunal must follow the clear and express statutory requirements and has no authority to disregard the same. Also, “filing requirements established by [a state tax] statute . . . are not readily susceptible to equitable modification or tempering.” *Helton v. Reed*, __ W. Va. __, __, 638 S.E.2d 160, 164 (2006).

Consequently, the petition for refund filed by the Petitioner must be denied.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioner-taxpayer to show that it is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002].
2. By filing its claim for refund with the State Tax Commissioner on September 13, 2006, the Petitioner failed to comply with W. Va. Code § 11-14C-31(c)(3), which requires that a claim for refund filed by a county board of education for the immediately preceding fiscal year

that ends on June 30 must be filed on or before August 31 of the year on which the fiscal year ends.

3. The West Virginia Office of Tax Appeals has no authority to disregard the express statutory requirement specifying the date by which a claim for refund must be filed.

4. The Petitioner has failed to carry its burden of showing that it is entitled to a refund.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of \$ of motor fuel excise tax, for the period of October 1, 2005, through June 30, 2006, must be and is hereby **DENIED**.